

1 W. WEST ALLEN
 2 Nevada Bar. No. 5566
 2 wwa@h2law.com
 3 JONATHAN W. FOUNTAIN
 3 Nevada Bar No. 10351
 4 jwf@h2law.com
 4 HOWARD & HOWARD ATTORNEYS PLLC
 5 3800 Howard Hughes Parkway, Suite 1000
 5 Las Vegas, Nevada 89169
 6 Telephone: (702) 257-1483
 6 Facsimile: (702) 567-1568
 7 *Attorneys for Plaintiffs/Counter-Defendants,*
Octaform Systems Inc., Octaform Inc.

8 **UNITED STATES DISTRICT COURT**
 9 **DISTRICT OF NEVADA**

10 OCTAFORM SYSTEMS INC. and
 11 OCTAFORM INC.,

12 Plaintiffs/Counter-Defendants,

13 v.

14 BRUCE JOHNSTON, ALBA LUCIA
 15 LOZANO HERNANDEZ JOHNSTON,
 15 JUN YU, CAROLINA DIAZ, and H-PAC
 16 PLASTICS, LLC,

17 Defendants/Counter-Plaintiffs.

18 ORDER

19 Case No.: 2:16-cv-02500-APG-EJY

20 **JOINT STATUS REPORT**

21 Plaintiffs/Counter-Defendants Octaform Systems Inc. and Octaform Inc. (collectively
 22 “Octaform”) and Defendants/Counter-Claimants Bruce Johnston (“Johnston”), Alba Lucia
 23 Lozano Hernandez Johnston (“Lozano Johnston”), Jun Yu (“Yu”), Carolina Diaz (“Diaz”) and H-
 24 PAC Plastics, LLC (“H-PAC”) (collectively “Defendants”), by and through their respective
 25 counsel of record, hereby submit the following Joint Status Report as directed by Court Order
 26 (ECF No. 165) on January 9, 2023.

27 This matter remains stayed pending final resolution of a Canadian arbitration proceeding
 28 that is based on the employment agreements entered into between Octaform Inc. and its former
 employees Bruce Johnston and Alba Lozano Johnston. Octaform asserts that Bruce Johnston and
 Alba Lozano Johnston misappropriated trade secrets and breached their respective Octaform
 employment agreements and nondisclosure agreements by creating and operating a competing
 business, H-PAC Plastics, in association with former Octaform employees and Octaform’s

1 previous manufacturer, Huajun Plastics Building Material Co., Ltd. (“Huajun”) in China. (See
2 ECF No. 108.) Defendants deny Octaform’s allegations. An arbitration proceeding was initiated
3 by Octaform against its former Chinese manufacturer Huajun (the “Huajun Arbitration”). A final
4 arbitration award was secured by Octaform against Huajun in the Huajun Arbitration on April 2,
5 2019.

6 Prior to the Huajun Arbitration, in December 2016, Octaform initiated an arbitration
7 proceeding against Johnston and Lozano in Canada (the “Canadian Arbitration”). The arbitration
8 hearing in the Canadian Arbitration began in late 2019 and continued through early 2020 until
9 restrictive COVID-19 protocols and multiple procedural filings created significant delays. The
10 hearing resumed in late 2020 and again in January 2022. The Canadian Arbitration, however,
11 continues to experience significant delays due to numerous Procedural Orders and Interim
12 Awards.

13 In total, nearly 50 Preliminary Orders and no less than three Interim Awards have been
14 entered in the Canadian Arbitration. Near the end of Canadian Arbitration in 2022, the Johnston
15 Defendants petitioned the Supreme Court of British Columbia in Vancouver, Canada, to have the
16 arbitrator recused and the entire six-year arbitration set aside on grounds that the arbitrator is not
17 “independent and impartial.” This recusal petition was denied, and Johnston and Lozano appealed
18 that decision before a final decision was entered.

19 Most recently, the following has occurred in the Canadian Arbitration:

- 20 • On February 15, 2022, Johnston and Lozano sold EZ PVC LLC (“EZ PVC”—the
21 alleged successor of Defendant H-PAC Plastics, LLC—to Amerilux International,
22 LLC without disclosing the sale to Octaform or in the Canadian Arbitration;
- 23 • On March 16, 2022, Octaform first learned of the EZ PVC sale and requested that
24 Johnston and Lozano produce documents and information concerning the sale;
- 25 • On March 26, 2022, Octaform moved for an order freezing the proceeds of the EZ
26 PVC sale until final resolution of the Canadian Arbitration and for an order
27 permitting discovery into the circumstances of the sale;

- 1 • On April 21, 2022, the arbitrator issued Interim Award No. 3, freezing the proceeds
2 of the EZ PVC sale, and permitting discovery into the circumstances of the sale.
3 Among other things, the arbitrator concluded that:
4 ○ The Canadian Arbitration had, to that date, occupied 56 hearing days;
5 ○ The arbitrator had been required to issue multiple Procedural Orders and
6 Interim Awards, dealing with, among other things, document disclosure
7 disagreements, adverse witnesses, evidentiary disagreements, the scope of
8 the arbitration, and the jurisdiction of the Tribunal, and other issues;
9 ○ Additional hearing days for final argument had yet to be scheduled; and
10 ○ Absent further delays the arbitration was expected to conclude in late 2022;
11 • On April 25, 2022, Johnston and Lozano moved for reconsideration of Procedural
12 Order No. 38, which permitted discovery into the EZ PVC sale;
13 • On April 28, 2022, the Arbitrator issued Procedural Order No. 39, refusing to
14 reconsider Procedural Order No. 38;
15 • On April 29, 2022, Johnston and Lozano disclosed documents concerning the EZ
16 PVC sale;
17 • On May 11, 2022, Johnston and Lozano moved for an order: (a) setting aside
18 Procedural Order No. 35, which permitted the submission of a redacted version of
19 the September 14, 2020, second expert report of Anthem Forensics regarding
20 damages; (b) setting aside Procedural Order No. 38, which permitted discovery
21 into the EZ PVC sale; (c) setting aside Interim Award No. 3, which froze the
22 proceeds of the EZ PVC sale; and (d) requiring the Arbitrator to recuse himself
23 based on alleged bias against Johnston and Lozano;
24 • On September 16, 2022, the Arbitrator issued his recusal decision and denied the
25 Johnston and Lozano recusal motion in its entirety.
26 • Immediately following this order, Johnston and Lozano applied to remove the
27 Arbitrator for alleged bias or reasonable apprehension of bias. Their bias petition
28 remains pending before the Supreme Court of British Columbia. The original

1 hearing for this petition proceeded over 7 days in January–February and May–June
2 2023. The protracted nature of the hearing allegedly requires a further hearing day
3 to conclude this proceeding. However, due to the busy Canadian Court docket, the
4 Court is not expected to hold this final hearing day until Fall 2023, with the Court’s
5 decision to be released sometime thereafter.

- 6 • Johnston and Lozano also sought to stay the Canadian Arbitration while their
7 application to remove the arbitrator is pending before the Supreme Court of British
8 Columbia. They applied for a stay but were unsuccessful because the court had no
9 jurisdiction to stay the parties’ incomplete Canadian Arbitration. Johnston and
10 Lozano then applied to the arbitrator for a stay, who also denied their request.
11 • Octaform still seeks to tender its final evidence and closing arguments in the
12 Canadian Arbitration. Yet another recent delay has arisen because the Defendants
13 have not responded to Octaform’s proposed deposition designations and have
14 objected to Octaform tendering evidence regarding the sale of EZ PVC. Johnston
15 and Lozano have asserted that if Octaform tenders this evidence and it is
16 considered, they will bring a new application for recusal of the arbitrator.
17 • Johnston and Lozano also have advised the arbitrator and Octaform that they
18 intend to bring “another motion” and will seek to file a new statement from a new
19 witness after Octaform closes its case-in-chief. The deadline for exchange of
20 witness statements expired in 2020.
21 • Closing arguments have not yet been scheduled in light of Johnston and Lozano’s
22 latest objections.

23 In this case, the Defendants recently moved to disqualify Octaform’s counsel. When good
24 faith efforts between counsel to resolve the “disqualification” issue were unsuccessful, on January
25 4, 2023, Octaform, through its Nevada counsel, filed a motion to lift the stay so that this Court
26 could resolve the matter and confirm that Octaform’s counsel properly screened a younger
27 attorney who formerly worked at the law firm representing the Defendants. (ECF Nos. 163 and
28 164). Defendants subsequently filed their own separate Motion to Disqualify. (ECF No. 167). The

1 Court entered its decision on May 25, 2023 (ECF No. 178). Magistrate Judge Youchah denied
2 Defendants' motion to disqualify Octaform's counsel. (ECF No. 167.)

3 Defendants have filed an Objection to Magistrate Judge Youchah's Order on June 8, 2023
4 (ECF No. 179). Octaform filed its Response to Defendants' Objection on June 22, 2023. (ECF
5 No. 180).

6 **JOINT REQUEST**

7 In light of the foregoing, the parties request that Court continue the stay in this action and
8 that the parties submit their next Joint Status Report by January 31, 2024, or within thirty (30)
9 days of the receipt of a decision in the Canadian arbitration.

10 Dated this 28th day of July 2023.

Dated this 28th day of July 2023.

12 **HOWARD & HOWARD ATTORNEYS PLLC**

13 /s/ W. West Allen
W. West Allen
14 Nevada Bar No. 5566
3800 Howard Hughes Parkway
15 Suite 1000
Las Vegas, Nevada 89169

16 *Attorneys for Plaintiffs/Counter-Defendants and
17 Third-Party Defendant*

DICKINSON WRIGHT PLLC

13 /s/ John L. Krieger
John L. Krieger
14 Nevada Bar No. 6023
3883 Howard Hughes Parkway
15 Suite 800
Las Vegas, Nevada 89169

16 *Attorneys for Defendants / Counter-
17 Claimants / Third-Party Plaintiff*

19 4864-0099-9281, v. 2

21 **IT IS SO ORDERED:**

22 Dated: July 31, 2023



23
24 ANDREW P. GORDON
25 UNITED STATES DISTRICT JUDGE
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